IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8475 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHUKHAJI GENAJI RAJPUT

Versus

MAMLATDAR &A.L.T.

Appearance:

MR BN PATEL for Petitioners

Mr R V Desai, AGP for Respondent No. 1 & 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/11/2000

ORAL JUDGEMENT

The petitioners above named, have preferred this petition under Article 226 of the Constitution of India, for appropriate writ, order or direction for quashing and setting aside the orders passed by the revenue

authorities at different levels on different dates in different proceedings. The facts may be briefly stated as follows:

The matter relates to agricultural land bearing survey no. 37 of village Nani Dugdol in Dhanera Taluka, District Banaskantha, which is admeasuring 30 Acres, 10 Gunthas. It appears that one Genaji Chelaji and Pithaji Chelaji, came to be the tenants in respect of the said land. It is the case of the respondents that the said tenants became eligible to purchase the said land as the tenants thereof on 2.9.1973. That however, in the meantime, on 13.12.1966, the present petitioners purchased the said land in a sum of Rs.3,400/- under a registered sale deed. It has been stated that this was the land under tenancy and it could not be purchased as aforesaid by the petitioners and, therefore, a decision was taken to proceed under section 84C of the Bombay Tenancy Agricultural Lands Act, 1948 ('the Act'). Notices were issued to the tenants as well as to the original owner of the land by the learned Mamlatdar, and the case was tried being Tenancy Case No.61/74/84-C. After holding enquiry as aforesaid, an order was passed by the learned Mamlatdar & ALT, Dhanera on 27.5.1975 treating the aforesaid sale in favour of the petitioners to be illegal and confiscating the said amount of Rs.3,400/- and also declaring the said sale in favour of the petitioners as invalid and ordering vesting of the said land in the State Government. The petitioners were dissatisfied by the aforesaid order of the Mamlatdar and hence they preferred Tenancy Appeal No.18/88 before the Dy.Collector, Palanpur. The said Appeal was dismissed by the Dy.Collector, by judgment and order dated 13.2.1989. Being aggrieved by the said judgment and order in appeal, the petitioners preferred Revision Application being Revision Application No.Ten.B.A.457/1989, before the Gujarat Revenue Tribunal, Ahmedabad. The learned Tribunal heard the parties and dismissed the said Revision of the petitioners by judgment and order dated 5.4.1991. Being aggrieved by the said judgment and order of the tribunal, the petitioners have preferred this petition under Article 227 of the Constitution of India. It has been mainly contended here that the learned Mamlatdar proceeded under section 84C of the Act without any notice being issued to the petitioners. It has also been contended that though the sale was effected long back, the proceedings started 8 years after the sale and purchase thereof and the delay would defeat the entire enquiry and therefore, the aforesaid order of the Mamlatdar is illegal and deserves to be quashed and set aside. Accordingly, the consequential orders passed in

appeal and revision are equally illegal and deserve to be quashed and set aside. The petitioners, therefore, prayed to quash and set aside the aforesaid three orders passed by the learned Mamlatdar, Dy.Collector and the learned Tribunal as aforesaid.

2. In this petition, rule was issued at the first instance. Interim relief was also granted in terms of para 8(b). In response to the service of rule, Mr R V Desai, learned AGP appeared and argued the matter. I have heard the learned Advocates for the parties and perused the papers.

3. Learned Advocate for the petitioners has argued at length that the petitioners were the purchasers of the land and when the land has been ordered to be vested in the State, the petitioners have suffered a lot and since they are the sufferer, it was incumbent on the part of the learned Mamlatdar to issue notice to the petitioners and to afford an opportunity of hearing to the petitioners before passing the aforesaid orders. On going through the order of the learned Mamlatdar, it becomes clear that the petitioners were not served with notice before passing the order dated 27.5.1975 by the learned Mamlatdar (ALT). It can be gathered from page 13 that when the enquiry was undertaken, notices were served upon the tenants and they were present before the Mamlatdar. It is further mentioned that some leading persons of the village were also present. It is further mentioned that Genaji Chelaji was duly served with notice and yet he was absent. This means that the persons who have been served with notices, and who were present at hearing, have been named in the order by the learned Mamlatdar. The presence of the leading persons has also been recorded. Same way, in case of the persons who have been served and yet remained absent, then their absence has also been recorded in the said order. It is nowhere stated that the present petitioners were served with notices of proceeding at any stage of the matter. It is, therefore, clear that the petitioners were not served with notice before passing the aforesaid order by the learned Mamlatdar. The learned AGP was unable to point out any material to show that the notices were issued to and served upon the petitioners.

4. It can be gathered from the order passed by the tribunal at page 22 that this point was raised before it and the tribunal has observed that the tenants were served with notices and, therefore, there is nothing illegal in the process undertaken by the Mamlatdar.

5. It is true that the tenants were father and uncle of the petitioners, but they were not the purchasers. A statement has been made on behalf of the petitioners that the petitioners have been staying separately from the father and uncle. Therefore, they hold a separate, different and independent entity in their individual capacity as the purchasers of the land and, therefore, it was obligatory on the part of the Mamlatdar to issue notices to the petitioners while proceeding ahead with the matter under Section 84C. Admittedly, notice has not been issued to and served upon the petitioners. Therefore, there is apparent violation of the provisions contained under Section 84B and 84C of the Act. Apart from the aforesaid provisions, it can be said that there is apparent violation of the principles of natural justice. The orders are ultimately aimed at the petitioners and if the orders are passed behind the back, then it amounts to clear violation of principles of natural justice.

6. Another aspect of the case is that the sale has been effected, admittedly, in the year 1966. The proceedings have been commenced in 1975. This shows that the proceedings have been commenced after 8 to 9 years. Records do not disclose as to why there was delay in commencing the proceedings under Section 84C of the Act. The delay has not been explained. In that view of the matter, it is clear that on the one hand there is inordinate delay of 8 years in commencement of the proceedings, on the other, the records do not disclose any explanation for the delay caused in commencing the proceedings. This shows that the aforesaid inordinate delay of 8 years has not at all been explained to any extent by any of the authorities before whom the aforesaid matters were conducted.

7. On this aspect of the case, it would be relevant to consider a couple of decisions. First is in the case of Mavjibhai v State of Gujarat (1994(2) GLR 1168). There it has been observed in para 17 that if the proceedings for annulment of a transaction is initiated after one year from its certification in the revenue records, the affected party might suffer huge loss on account of his having changed his position vis-a-vis his holding. In that case, if the authority initiating the proceedings under section 84C of the Act is satisfied that the action thereunder would prejudicially and materially effect the recipient of the notice, he need not exercise his powers thereunder. If powers under section 84C are sought to be exercised beyond reasonable time, say about 5 years after the entry pertaining to the

so-called invalid transaction in the revenue records is certified, the authority exercising such powers will have to justify his belated action. For the purpose, in the aforesaid decision, the learned Single Judge of this Court has also relied upon a well known decision of State of Gujarat v. Patel Raghav Natha & Ors.(1969) X GLR 992, wherein also it has been laid down that when suo-motu proceedings are undertaken under the provisions of section 211 of the Bombay Land Revenue Code and when there is no express provision about the limitation, then all such suo-motu proceedings will have to be initiated within a reasonable time. It is true that the question of reasonable time will have to be decided in light of the facts and circumstances in each case. Any way, the delay has to be explained and unless it is explained, it cannot be said that there is reasonable time taken by the authority in commencing the proceedings.

8. Another decision of this court can be seen from the case of Jiviben Kalaji Bapuji v. State of Gujarat (1998 (2) GLH 556. There also it has been observed as follows:

> "It appears to the Court that the decision of this Court in the case of Patel Jividas (supra) prima facie supports the petitioner's case. However, in an unreported decision on 22.8.1996 in Civil Appeal No.6023 of 1985 (Mohemad Kavi Mohamad Amin v Fatimabai Ibrahim), the Apex Court has held that where no time limit is prescribed for exercise of power under a statute, it does not mean that it can be exercised at any time, such power has to be exercised within a reasonable time. In the aforesaid decision dated 22.8.1996, the Apex Court has also approved the ratio of the judgment of this Court speaking through Hon'ble Mr Justice S B Majmudar (as His Lordship then was) in Special Civil Application no.2770 of 1979 (State of Gujarat v. Jethmal Showandas Shah) decided on 1.3.1990 that the power under section 84C of the Bombay Tenancy and Agricultural Land Act (hereinafter referred to as "the Tenancy Act") should be exercised within a reasonable time."

9. It is, thus, clear that the suo-motu proceedings have to be commenced within a reasonable time. In the present case, the proceedings have been commenced after about 8 years, which cannot be said to be a reasonable period. It is more so, when this inordinate delay has not at all been explained. It has been argued that the

sale was not noticed by the authority concerned. This is also not correct and it cannot be accepted for the simple reason that since the sale is effected and mutation entries are made, the fact of sale is definitely incorporated in such entries. This can be gathered from the records of Village Form No.6 and 8-A coupled with entry in form 7, 7-A and 12. Entries are made in this record and they are certified in accordance with the provisions made in the Bombay Land Revenue Code. It, therefore, cannot be said that the authorities were unable to notice the transactions within a reasonable time. At the time of making or certifying the entries, the authority should be aware of the legal aspects of the case and they should not have made or certified the entries, if they were not properly made. At the time of serving of notices, making and certifying entries, mind should have been applied and there would not be any delay in commencing of such proceedings. Under the circumstances, the delay caused is not reasonable and is not shown to be reasonable. It is, therefore, clear that there was inordinate delay of about 8 years and the said delay has remained unexplained. In this circumstance, the proceedings undertaken after long lapse, i.e. after 8 years without any explanation, cannot be sustained.

10. In my opinion, the entire proceedings undertaken by the learned Mamlatdar and confirmed by the Deputy Mamlatdar in appeal and by the Tribunal in Revision are illegal and cannot be sustained and are required to be quashed and set aside by allowing this petition. In the result, this petition is allowed. The impugned judgment order recorded by the learned Mamlatdar dated 27.5.1975 in Tenancy Case No.61/84-C and the orders in appeal, being Tenancy Appeal No.18/88 dated 13.2.1989 as well as the orders in Revision being Revision Application No.Ten.B.A./457/89 by the Gujarat Revenue Tribunal dated 5.4.1991 are quashed and set aside. The respondents are prevented from implementing and enforcing the aforesaid orders.

Rule is made absolute accordingly. However, considering the facts and circumstances, there shall be no order as to costs.

24.11.2000 [D P Buch, J.]
msp